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PART II - MISCELLANEOUS NOTIFICATIONS OF INTEREST TO THE PUBLIC

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NOTIFICATIONS BY HEADS OF DEPARTMENTS Etc.,

**PRINCIPAL SENIOR CIVIL JUDGE COURT,
NELLORE**

I.P.No. 25/2017

Chejerla Rami Reddy,

....Petitioner

Vs

1. Srikolanu Venkata Krishna Reddy

....Respondents

2. Donthireddy Srinivasulu Reddy

NOTICE

Notice is hereby given Under Section 9 of the Provincial Insolvency Act, 1920 that the petitioner prays to adjudicate of Respondent No.I as insolvent and the said petition is allowed.

Dated this the 30th day of August, 2019.

T. HARITHA,
Principal Senior Civil Judge,
Nellore.
[Dis.No.738.]

**PRINCIPAL SENIOR CIVIL JUDGE COURT,
NELLORE**

I.P.No. 25/2017

Chejerla Rami Reddy

... Petitioner

Vs.

1. Srikolanu Venkata Krishna Ready

2. Donthireddy Srinivasulu Reddy

... Respondents

This petition is coming on 05-08-2019 before me for final hearing in the presence of Sri. M.Sundaraiah Yadav, Advocate for the petitioner and the respondent Nos.1 and 2 remained exparte, and this matter having stood over till this day for consideration, this Court delivered the following:

ORDER

The Petitioner/Creditor filed this insolvency petition against the respondent Nos.1 and 2 U/Sec.9 of Provincial Insolvency Act, 1920 to adjudicate the 1st respondent as an insolvent, and the “B” Schedule mentioned properties be directed to be vested in the Official Receiver, Nellore for the purpose of distributing the same among creditors and to set aside the sale deeds bearing Document No.259/2017, Dt:13-02-2017 and Document No.260/2017, dt.13-02-2017 executed by the 1st respondent in favour of 2nd respondent in respect of “B” Schedule mentioned properties as null and void and not binding on the petitioner and for costs.

2) The brief averments in the insolvency petition are as follows:- The 1st respondent borrowed a sum of Rs.5,00,000/- from the petitioner on 19.10.2013 and executed two promissory notes at Rs.2,50,000/- each on the even date in his favour agreeing to repay the same with interest at 24% per annum either to the petitioner or to his order on demand. The 1st respondent failed to pay any portion of the amount due to him under the above said promissory notes inspite of several repeated demands made by him. He filed OS No.162/2015 on the file of I Addl. Senior Civil Judge, Nellore against the 1st respondent herein for recovery of amount due to him under the above said two promissory notes and also filed an IA for attachment of “B” schedule mentioned properties before the judgment. The debts were fully described in the “Schedule-A” attached to the IP Petition. 1st respondent is the absolute owner of the petition “B” schedule properties. The 1st respondent sold the “B” Schedule mentioned properties to the 2nd respondent under two registered sale deeds, dt.13-02-2017 bearing Document Nos.259/2017 and 260/2017. The sale consideration mentioned in the sale deeds are grossly inadequate. The present value of the “B” Schedule mentioned properties is more than the value mentioned in the said sale deeds. The sole intention behind the above sale transactions is to defeat and defraud creditors of the 1st respondent including the petitioner herein depriving their legitimate right to recover the debts due to them from the 1st respondent. The said sale transactions are fraudulent transactions. He orally requested the 1st respondent to pay the amount due to him in the above said promissory notes, but he did not comply the

said request. Later on 22-03-2017 he got issued a legal notice to the respondents, but he 1st respondent returned the same and the 2nd respondent received the said notice. The 1st respondent is the owner of the Petition "B" Schedule mentioned properties. They are not sufficient to pay the amount under the above mentioned promissory notes. The 1st respondent committed an act of insolvency by transferring petition "B" Schedule mentioned properties with an intention to defraud his creditors. Thus, he filed this petition to declare the 1st respondent as Insolvent and to set aside the sale deeds executed by the 1st respondent in favour of the 2nd respondent. There is no collusion between the petitioner and the respondents in filing this petition. The debts due to the petitioner is more than Rs.500/-. Hence, this petition is maintainable. Prays to allow the petition.

3) The respondent Nos. 1 and 2 received notices, they did not file any counter. They were set exparte. Respondent Nos.1 and 2 remained exparte.

4) During enquiry, the petitioner himself got examined as PW.1 and got marked Exs.P1 to P7. Petitioner evidence closed. Respondent Nos.1 and 2 remained exparte. Respondent Nos.1 and 2 not adduced any evidence on their behalf.

5) Heard counsel for petitioner.

6) Now, the point for determination are :

"Whether the 1st respondent committed the act of insolvency, he is liable to be adjudicated as insolvent by alienating the Petition "B" Schedule mentioned properties to the 2nd respondent, as prayed for?"

POINT

7) The petitioner reiterated the contents of the petition in his chief-examination affidavit. Exs.P1 and P2 are the Certified copies of promissory notes dt.19-10-2013 executed by the 1st respondent in favour of the petitioner for Rs.2,50,000/- each filed on the file of I Addl. Senior Civil Judge, Nellore in OS No.162/2015. Ex.P3 is the Certified copy of plaint in OS No.162/2015 on the file of I Addl. Senior Civil Judge, Nellore. From the contents of Exs.P1 to P3, it is clear the 1st respondent borrowed amount from the petitioner and executed promissory notes in his favour and the petitioner filed the suit for recovery of amount against the 1st respondent. The 1st respondent did not deny the execution of Exs.P1 and P2 promissory notes and did not deny the liability of the petitioner and filing of suit for recovery of amount due under Exs.P1 and P2 promissory notes. Exs.P4 and P5 are the certified copies of registered sale deeds Dt:13-02-2017 executed by the 1st respondent in favour of 2nd respondent. The present petition is filed on 25-04-2017. That means petition is filed by the petitioner within 90 days from the date of sale deeds executed by the 1st respondent in favour of 2nd respondent. Hence, the petition is maintainable.

8) The petitioner categorically mentioned, except petition "B" Schedule mentioned properties covered under Exs.P4 and P5, 1st respondent has no other properties. He had no sufficient properties to pay the amount due under the suit promissory notes. Thus, he committed an act of insolvency by transferring the petition "B" Schedule mentioned properties. The said fact was also not denied by the respondent Nos.1 and 2. Hence, this Court has no other option to accept the plea, except

the petition "B" Schedule mentioned properties, which was sold by the 1st respondent in favour of 2nd respondent under Exs.P4 and P5, 1st respondent has no other properties to discharge his debts and the properties sold by him are not sufficient to discharge the amount due to the petitioner. After filing of the suit for recovery of amount by the petitioner, the 1st respondent sold the properties owned by him, it seems with a view to defeat the interest of the creditors and defraud the creditors ie., petitioner herein the 1st respondent sold his properties to the 2nd respondent.

9) Evidence of PW.1, contents of Exs.P1 to P7 are not challenged by the respondents 1 and 2. In view of unchallenged evidence of PW.1, contents of Exs.P1 to P7 also the petitioner proved his claim.

10) In view of the above discussion, the petitioner is able to prove that the 1st respondent committed an act of insolvency and he is liable to be declared as insolvent. Hence, the petitioner is entitled for the relief as prayed for.

11) In the result, insolvency petition is allowed with costs adjudging the 1st respondent as an insolvent.

The two sale deeds dated 13.02.2017 executed by the 1st respondent in favour of the 2nd respondent under Exs.P4 and P5 on the file of Sub- Registrar, Buja Buja Nellore are to be set aside with regard to the petition "B" schedule mentioned properties by filing separate petition by Official Receiver.

As per Sec.27 of Insolvency Act, 1920, 1st respondent shall apply within 6 months from the date of this order for his discharge.

Publish an order of adjudication as per Sec.30 of Provincial Insolvency Act in Official Gazette with details of notice of order of adjudication stating the name, address, description of the insolvent, date of adjudication, the period within which the debtor shall apply for his discharge and the Court by which the adjudication is made in the manner as prescribed.

As per Sec.28 (2) of Provincial Insolvency Act, 1920 petition schedule property i.e., Petition "B" schedule mentioned properties belongs to 1st respondent/insolvent shall forthwith vest in the Court and which then upon vests in Official Receiver U/Sec.56 (1) of Provincial Insolvency Act, 1920. The possession also vests with the Official Receiver.

As per Sec.28(7) of Provincial Insolvency Act, 1920 after order of adjudication shall relate back to and take effect from the date of presentation of petition on which it is made i.e., 25.04.2017.

The Office is directed to forward copy of order to the Official Receiver.

For filing publication made in Official Gazette call on 02-03-2020.

Dictated to the Stenographer, transcribed by her corrected and pronounced by me in the open Court on this the 30th day of August, 2019.

T. HARITHA,
Principal Senior Civil Judge,
Nellore.

APPENDIX OF EVIDENCE
WITNESSES EXAMINED

FOR PETITIONERS :-**FOR 3rd RESPONDENT :-**

PW1: Ch.Rami Reddy

DOCUMENTS MARKED**FOR PETITIONER :**

Exhibit	Date		Description of document
P1	19-10-2013	:	Certified copy of promissory note executed by the 1 st respondent in favour of petitioner for a sum of Rs.2,50,000/- filed in OS No.162/2015 on the file of I Addl. Senior Civil Judge, Nellore.
P2	19-10-2013	:	Another Certified copy of promissory note executed by the 1 st respondent in favour of petitioner for a sum of Rs.2,50,000/- filed in OS No.162/2015 on the file of I Addl. Senior Civil Judge, Nellore.
P3	—	:	Certified copy of plaint in OS No.162/2015 on the file of I Addl. Senior Civil Judge, Nellore.
P4	13-02-2017	:	Certified copy of Registered Sale deed bearing Doc. No.259/2017 executed by 1 st respondent in favour of 2 nd respondent.
P5	13-02-2017	:	Certified copy of Registered Sale deed bearing Doc. No.260/2017 executed by 1 st respondent in favour of 2 nd respondent.
P6	22-03-2017	:	Office copy of legal notice got issued by the petitioner to the respondents along with postal receipt.
P7	—	:	Unserved registered Notice.

FOR RESPONDENTS :- -NIL-

T. HARITHA,
Principal Senior Civil Judge,
Nellore.

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